

## Class Size - Guidelines for New Regulations

Effective June 27, 2008, the Class Size Regulation was amended to include a definition of “consult” for the purpose of the class size provisions of the School Act (specifically, sections 76.1(2.2)(b), 76.1(2.3)(b), 76.2(a) and 76.3(8)(a)(i)). The term “consult” in those sections is now defined in section 1(4) of the Regulation to mean:

- (a) provision by the principal of a school to the teacher of a class with
  - i. information relevant to a proposal for the size and organization of the class, and
  - ii. 2 school days before a decision is made respecting the size and organization of the class for the teacher to consider the proposal and provide the principal with the teacher’s views in that regard, and
- (b) consideration by the principal of the teacher’s views, if any have been provided, and “consulted” has a similar meaning.

BCPSEA has identified the following possible issues regarding the new definition of consult:

- What does the provision of “information relevant to a proposal for the size and organization of the class” mean?
- What does the provision of “2 school days before a decision is made for the teacher to consider the proposal” mean?
- What does “consider the proposal and provide the principal with the teacher’s views mean”?
- What does “consideration by the principal of the teacher’s views, if any have been provided,” mean?

### 1. The Provision of Relevant Information

#### (a) What is relevant information?

The following are two examples of how the term “relevant” is defined:

“having significant and demonstrable bearing on the matter at hand”: Merriam-Webster’s Dictionary

“closely connected or appropriate to the matter in hand”: Concise Oxford English Dictionary

The definition of consult states “... information relevant to a proposal for the size and organization of **the** class ...”. Therefore, principals should provide the teacher with the proposal for the size and organization of the class. The requirement focuses on information relevant to the individual class itself. As a result, while supplemental generic information may be helpful, further information provided to the teacher should focus on the specific class. In addition, information about similar classes at a similar

grade level will be relevant. For example, in a school that has three grade 10 social studies classes, information about the size and organization of the other classes will be relevant.

The following types of supplemental information may also be relevant:

- Organization chart for the relevant classes in the school
- Budgetary factors

(b) In what form must the relevant information be provided to the teacher?

The definition of consult does not require that the relevant information be provided in any specific form. Therefore, it is not mandatory that the information be provided in writing or that the information be provided in person directly to the teacher. The methods of providing the relevant information that are likely acceptable under the definition of consult, include:

- Written material delivered to each applicable teacher
- Information verbally provided to the individual teacher
- Combination of verbal and written material provided to the individual teacher
- Where appropriate, a meeting with the affected teachers as a group

As there is nothing in the legislation that requires a particular form for the provision of information, each district should adopt a process that is consistent with its operating culture. Although not required by the legislation, there may be value to having the principal meet with the teacher to provide the information.

While it is highly recommended that principals keep notes of all discussions to use should a grievance arise, a form to record class size discussions is not mandatory. Districts may decide to use a form for administrative ease. The benefit of using some type of form is that it ensures the necessary information is captured in the event the district is required to defend a decision at arbitration. Such a form should be for the principal's use only and used only to record the discussions between the principal and teacher. It is recommended that if a form is used, districts use a form similar to the ones attached. We no longer recommend the form that BCPSEA provided to districts as a template in 2006.

A statement should also be included in the materials provided to teachers to alleviate any misperceptions that a final decision has already occurred during the early stages of September when preliminary staffing has been assigned, but before the consultation process has been completed. For example:

Initial class compositions and assignments that occur prior to and during the consultation period in September should not be perceived in any way as being indicative of a decision being made.

Principals should keep copies of the information provided to teachers and, as stated above, notes of discussions with teachers regarding the proposed size and organization of the class.

(c) When must the relevant information be provided by the principal to the teacher?

Section 76.2 of the School Act states:

Organization of classes — consultation at the beginning of the school year

76.2 In each school year, the principal of a school must, within 15 school days after the school opening day set out in the school calendar applicable to the school for the school year,

- (a) if applicable, obtain the consent of or consult with the teacher of a class as required by section 76.1 (2.1) (b), (2.2) (b) or (2.3) (b),
- (b) consult with the school planning council with respect to the proposed organization of classes within that school for that school year, and
- (c) provide the superintendent of schools with a proposed organization of classes for the school for that school year that is, in the opinion of the principal, appropriate for student learning.

Consultation must be completed by Tuesday September 23, 2008 (“within 15 school days after the school opening day” and school opening day for the 2008-2009 school year is Tuesday September 2<sup>nd</sup>). Therefore, the latest that this information can be provided is Friday September 19<sup>th</sup> (because September 21<sup>st</sup> is a Sunday and section 76.2 refers to school days).

Pursuant to section 76.2, the principal is not required to provide the information prior to the school opening day (Tuesday September 2<sup>nd</sup>) as consultation is to occur within 15 days after school opening day.

Therefore, a principal must provide the teacher with the information relevant to a proposal for the size and organization of the class sometime between September 2<sup>nd</sup> and 19<sup>th</sup>, 2008:

School Opening Day	Deadline for Provision of Relevant Information	Consultation Complete
Tuesday September 2	Friday September 19	Tuesday September 23

Pursuant to section 76.4 of the School Act, the requirement for consultation with the teacher of a class applies throughout the year where the size of any class for any of grades 8 to 12 exceeds 30 students or any class has more than 3 students with an individual education plan.

## 2. The Provision of “2 School Days”

The definition of consult requires that the principal provide the teacher with 2 school days before a decision is made for the teacher to consider the proposal and provide the principal with the teacher’s views in that regard.

It is likely that there would be no violation of the legislation if a teacher were to provide his/her views regarding the proposal, and the principal were to receive the information, earlier than the 2 school days set out in the legislation. However, it is prudent for the principal to ensure that no decision is made prior to the expiry of the 2 school day period. This will avoid a situation where a teacher provides his/her views early, a decision is made and then the teacher decides to provide further information within the 2 school day period.

As a result of the consultation process, if the proposals for any classes are changed by the addition of students in excess of 30 or more than 3 students with an individual education plan (“IEP”), the principal will have to consult with those teachers in accordance with the definition of consult. For example:

The proposed organization of a particular class includes 5 students with an IEP. As a result of the consultation process with the teacher of that class, the principal proposes to move one of

the students with an IEP to another class. The proposed organization of the other class now includes 5 students with an IEP. The principal will have to consult with the teacher of the other class, in accordance with the definition, even if the teacher was already consulted because the original proposal for the organization of his/her class included 4 students with an IEP.

It is within the principal's discretion to consider information provided by a teacher outside the 2 school day period. If the information is provided prior to a decision being made, it may be prudent to consider the teacher's views despite being provided outside the 2 school day period.

### 3. Consideration of the Proposal and Provision of the Teacher's Views

There is nothing in the definition of consult that dictates any particular form in which the teacher must provide his/her views to the principal. Therefore, a principal may request that a teacher provide his/her views in a particular form, e.g. in writing, in person, as an individual or as a group. However, it is unlikely that a principal could give the teacher an ultimatum regarding the form, e.g. "provide your views in writing or they won't be considered".

A principal can provide teachers with options, for example:

"Please provide any views respecting the proposed size and organization of your class by x date. You can provide your views either in writing, in person, or as a group. If you would like to meet in person, please select one of the available time slots listed. If you would like to but are unable to provide your input through 1 of these options, please contact me to discuss."

If a teacher does not engage in the consultation process and does not provide his/her views regarding the proposed the size and organization of the class, a principal can proceed with his/her decision. In fact, the legislation contemplates a situation where a teacher does not provide his/her views: "consideration by the principal of the teacher's views, **if any have been provided**". A principal must provide a teacher with the relevant information and provide 2 school days before a decision is made for the teacher to consider the proposal and provide his/her views in that regard. However, if a teacher chooses not to participate, the principal can make a decision even in the absence of receiving the teacher's views. It is highly recommended that the principal record the teacher's refusal to provide his/her views and/or the fact that the principal did not receive any input or communication from the teacher within the time lines.

### 4. Consideration By the Principal of The Teacher's Views

The following are two examples of how the term "consideration" is defined:

"A matter weighed or taken into account when formulating an opinion or plan"; "taking into account": Merriam-Webster's Dictionary

"Careful thought"; "a fact that is taken into account when taking a decision": Concise Oxford English Dictionary

The term "consideration" has also been interpreted to mean:

To "take into consideration" is to be aware of and give serious thought to when making a decision. But "is not a strong clause ... due to the mere requirement to "consider" ...: *Coast*

*Mountain School District No. 82 v. Terrace District Teachers' Union (Sharples Grievance)*, [2000] B.C.C.A.A. No. 217 (Jackson).

Should a principal's decision be challenged, he/she will likely have to demonstrate that the teacher's views were considered prior to decision being reached regarding the size and organization of a class. He/she may also have to show the reasons for the decision and why the advice of the teacher was not followed. Finally, a principal may also have to show that a decision was not pre-determined where a student is placed in a class on an interim basis prior to the completion of the consultation process and the principal's decision, after consultation with the teacher, is to leave the student in that class.

That said, there is arbitral jurisprudence to support the notion that when an arbitrator is called upon to review the employer's consideration of certain factors, a fair degree of latitude should be accorded the decision-makers: *Coast Mountain School District No. 82, supra*. In the *Coast Mountain School District No. 82* case, the arbitrator concluded:

"While the employer was obliged to consider five factors in making its decision about who to assign to the Career Programmes position, the parties' choice of the word "consideration" in article 47.7 left a lot to the discretion of the employer. For those reasons already discussed, I have concluded that the employer made its assignment decision under the appropriate provisions of the agreement and in doing so did not violate the agreement."

Therefore, while principals may need to show that they considered the teacher's views, the term "consideration" does leave a lot to the discretion of the principal. Further, the term consultation does not require consent to the decision.

## **Recent Issues Raised by BCTF Locals**

The following are issues that have been raised by BCTF locals and BCPSEA's response:

- 1. Information relevant to proposals for the size and organization of classes must be in writing.**

As discussed above, the definition of consult does not require that the relevant information be provided in any specific form. Therefore, it is not mandatory that the information be provided in writing.

- 2. Written rationales for proposals for classes that exceed 30 students or 3 students with an IEP must be provided.**

The new definition of consult requires that the principal of a school provide the teacher of a class with information relevant to a proposal for the size and organization of the class. There is no specific requirement that principals provide "written rationales".

- 3. In order for there to be genuine consultation regarding class size and organization, the district must be able and willing to provide resources (e.g. additional classroom teachers, additional prep time, additional learning assistance and special education teachers, and necessary learning resources) to address concerns that will arise during the process.**

The class size provisions of the School Act and the Class Size Regulation do not require that additional resources be provided when grade 4 – 12 classes have more than 30 students or when there are more than 3 students with an IEP in a class.

## **Questions**

If you have any questions regarding this bulletin, please contact your BCPSEA labour relations liaison.